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# THE AMERICAN LAW REGISTER

FOUNDED 1852.

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UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

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VOL. { 46 O. S.  
      { 37 N. S. } OCTOBER, 1898. No. 10.

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## IS SECTARIANISM A BAR TO EXEMPTION FROM TAXATION AS A “PURELY PUBLIC CHARITY?”

In other words, is a charitable use to be denied exemption from taxation as a purely public charity solely because its benefits are confined to the members of a particular religious sect?

The question arises under Article IX of the Pennsylvania Constitution of 1874. Sections 1 and 2 read as follows:

Section 1. “All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

Section 2. “All laws exempting property from taxation, other than the property above enumerated, shall be void.”

In pursuance of the constitutional warrant—for the Constitution itself confers no exemption—the Act of May 14, 1874,<sup>1</sup> was passed, providing as follows:

<sup>1</sup> P. L. 158.

“All churches, meeting houses or other regular places of stated worship, with the grounds thereto annexed necessary for the occupancy and enjoyment of the same; all burial grounds not used or held for private or corporate profit; all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed and maintained by public or private charity; and all school houses belonging to any county, borough or school district, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same; and all court houses and jails, with the grounds thereto annexed, be and the same are hereby exempted from all and every county, city, borough, bounty, road, school and poor tax: Provided,”<sup>1</sup> &c.

It may be observed, in passing, that it can make no difference in the case of the charity under consideration whether the claim to exemption is assigned to the omission of the legislature to subject the institution to taxation prior to 1873,<sup>2</sup> or to a special Act of Assembly passed after the constitutional amendment of 1857,<sup>3</sup> or, indeed, to the general Act of April 8, 1873,<sup>4</sup> which provides for the exemption of, *inter alia*, “all charitable institutions founded by charitable gifts or otherwise, the chief revenues for the support of which are derived from voluntary contributions, together with the lands attached to the same.” For, in the end, it comes to this: That any claim to exemption from taxation must now be tested by the Act of May 14, 1874, above cited, as read in the light of the present Constitution.

To repeat, then, may a sectarian charity be regarded as ‘an institution of benevolence or charity, purely public, founded, endowed, and maintained by public or private charity’? Upon the answer to this question depends the right of the institution to exemption.

<sup>1</sup> The proviso (unconstitutional) has no bearing upon the subject in hand.

<sup>2</sup> *Philadelphia v. Barber*, 160 Pa. 123, 128 (1894).

<sup>3</sup> *Wagner Institute v. City of Philadelphia*, 18 Phila. 285 (1886), affirmed in 116 Pa. 555 (1887); *Wagner Institute v. Philadelphia*, 132 Pa. 612 (1890); *Philadelphia v. Jewish Hospital Association*, 148 Pa. 454 (1892); *Philadelphia v. Masonic Home*, 160 Pa. 572 (1894).

<sup>4</sup> P. L. 64; supplied by Act of May 14, 1874 (P. L. 158). And see Constitution of 1874, Art. IX, § 2; Schedule, § 2.

Of course, a charity is none the less a charity because its benefits are reserved for the members of a certain sect. In a popular sense, such a charity may be termed a public benevolence, in that its beneficiaries form an indefinite class of the community at large. But, according to reason and precedent, it would seem not to be a charity "completely, entirely, unqualifiedly"<sup>1</sup> (or "purely") public, and, therefore, not entitled to exemption from taxation.

It must be granted that, inasmuch as the charity in question falls within the letter of the Act of May 14, 1874, it is *prima facie* a proper subject of exemption; and the burden of proof would be upon the taxing power to show that, "to apply the language of the act to this particular case, would be a violation of the constitutional provision."<sup>2</sup> But, in spite of this presumption in its favor, the conclusion that a sectarian charity forfeits its claim to exemption by reason alone of its sectarian discrimination is thought to be free from substantial doubt as the law of Pennsylvania stands to-day.

The first proposition in Penn's Charter of Privileges, accepted by the Assembly on the 28th day of October, 1701, is couched in the following terms :

"Because no people can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences as to their religious profession and worship; and Almighty God being the only Lord of conscience, Father of lights and spirits, and the author as well as object of all divine knowledge, faith and worship, who only doth enlighten the mind and persuade and convince the understandings of people, I do hereby grant and declare that no person or persons inhabiting in this province or territories, who shall confess and acknowledge one Almighty God, the creator, upholder and ruler of the world, and profess him or themselves obliged to live quietly under the civil government, shall be in any case molested or prejudiced in his or their person or estate because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain any religious worship-place or ministry contrary to his or their mind, or to do or suffer any other act or thing contrary to their religious

<sup>1</sup> Mitchell, J., in *Philadelphia Library Co. v. Donohugh*, 12 Phila. 284, 289 (1877), affirmed in 86 Pa. 306 (1878).

<sup>2</sup> Green, J., in *Burd Orphan Asylum v. School District*, 90 Pa. 21, 34 (1880).

persuasion. And that all persons who also profess to believe in Jesus Christ, the Saviour of the World, shall be capable (notwithstanding their other persuasions and practices in point of conscience and religion) to serve this government in any capacity, both legislatively and executively, . . . ”<sup>1</sup>

And, if there could be any doubt about the matter, citations of like import might be multiplied to attest the uniform and resolute purpose of the people of Pennsylvania at every stage of its history to accord public recognition—whether to help or to hurt—to no creed but the broad faith of Christianity.

“ Christianity is part of the common law of this state,” was said, indeed, in the old case of *Updegraph v. Commonwealth*,<sup>2</sup> where the “constitutionality” of Christianity was in question. But the common law of Pennsylvania has gone no further in the ordering of men’s consciences. “ The minds of William Penn and his followers would have revolted at the idea of an established church. Liberty to all, but preference to none; this has been our principle, and this our practice.”<sup>3</sup> “ By general Christianity is not intended the doctrine of worship of any particular church or sect; the law leaves these disputes to theologians.”<sup>4</sup>

This attitude of the state toward religion has ever been maintained,<sup>5</sup> and the plain significance of it all must be that no person, taken as a member of society, shall be either favored or prejudiced by reason of his affiliation with this or that particular sect. It is enough that he accepts the ecumenical creed of Christianity and conforms to its catholic canons. His rights and duties as a member of the community are in no wise made to depend upon the confession of a special creed or the practice of an esoteric cult.

<sup>1</sup> *i* Dallas’ Laws, Appendix, page 9. See, likewise, Statutes at Large of Pennsylvania, Vol. II, page 3 and page 171; also Article I, Sections 3 and 4 of the Constitution of 1874.

<sup>2</sup> 11 S. & R. 394, 406 (1824).

<sup>3</sup> Tilghman, C. J., in *Guardians of the Poor v. Greene*, 5 Binney, 554, 558 (1813).

<sup>4</sup> *Updegraph v. Commonwealth*, 11 S. & R. 394, 408 (1824), *et passim*.

<sup>5</sup> *i* Sparhawk *v. Union Passenger Railway Co.*, 54 Pa. 401 (1867).

Now, broadly considered, a charity is "a gift to a general public use."<sup>1</sup> The beneficiaries take in their right as members of the general public, and not as individuals. If the gift be to "the poor of Philadelphia," it is a purely public charity. So, if the gift be to "the Christian poor of a city;" for the law takes note of the Christian religion. But a gift to "the poor members of a particular sect in Philadelphia" is not a gift to the public at all, in a legal sense; for the denominational test is not sanctioned by the law, and creates a distinction with which the public at large is in no manner concerned. Such a gift is lawful and beneficent, but it cannot be termed public; much less "purely public," as the Constitution enjoins.

It might be argued that the condition in regard to membership in a certain religious sect not only excludes the general public, but seeks and tends to promote the particular interests and influence of that sect; and that, so, for an added reason, such a charity should be regarded as an institution of private benevolence. But this aspect of the case throws no light upon the main question; for the law looks at the practical effect of charity, and cares nothing for the motive that prompts the gift. As the Supreme Court has said: "The true test of a legal public charity is the object sought to be attained; the purpose to which the money is to be applied; not the motive of the donor."<sup>2</sup> It should be explained that the denominational pride referred to is honorable and not unworthy, and that without its stimulus countless deeds of charity would be left undone. But the spirit is none the less selfish, exclusive, and private in its legal aspect; and, it must be borne in mind, the controversy does not turn on sentiment, but upon the solemn mandate of the whole people—the fundamental law.

In closing this general discussion, it should be observed that it matters not that the administration and control of a charity are in sectarian hands; for the law in respect to chari-

<sup>1</sup> *Jones v. Williams, Ambler*, 652.

<sup>2</sup> *Fire Insurance Patrol v. Boyd*, 120 Pa. 624, 646 (1888).

ties heeds neither the motive nor the medium of the benefaction, but regards its destination alone.<sup>1</sup>

The legal effect thus given to the words "of purely public charity," contained in Article IX, Section 1, of the Constitution of 1874, would seem to be in accord with the general spirit and tenor of the organic law. In Article X, Section 2, we find that, "No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school;" and in Article III, Section 18, we read as follows: "No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association." That is to say, in conformity with the usage and policy of the common law, sectarian religion shall not be made a matter of public concern; the money of the people shall not be used in ease of denominational endeavor, even though the cause be that of education or the great cause of Charity.

It would seem to be no answer to say that these collateral constitutional provisions were meant simply to prevent favoritism among the sects; for that reasoning would tend to the conclusion that the Constitution would not preclude appropriations by the legislature to *all* the institutions in question. Nor is it even plausible that the policy that prohibits *direct* gifts to *any* sectarian charity should sanction *indirect* gifts to *all* sectarian charities; for the burden laid on the people at large is in both cases the same, and from their point of view the exemption is always nothing more nor less than "an annual appropriation of their money, in a sum equal to the amount of taxes here imposed, for the benefit of a favored few."<sup>2</sup>

The Constitution of 1874<sup>3</sup> authorizes the legislature to exempt from taxation (1) public property used for public

<sup>1</sup> See *Episcopal Academy v. Philadelphia*, 150 Pa. 565 (1892); *Missionary Society v. Receiver of Taxes*, 173 Pa. 456 (1896).

<sup>2</sup> *Dean, J., in Philadelphia v. Masonic Home*, 160 Pa. 572, 580 (1894).

<sup>3</sup> Art. IX, § 1.

purposes, (2) actual places of religious worship, (3) places of burial not used or held for private or corporate profit, and (4) institutions of purely public charity. And it may be argued that the express mention here of places of religious worship, which are invariably sectarian, and of burial-grounds, which are usually so, is conclusive against the intent sought to be drawn from Section 2 of Article X and Section 18 of Article III above referred to. But this is no more than saying that the exceptions are inconsistent with the rule. The true reasoning would seem to be that sectarian churches and burial-grounds enjoy immunity from taxation because the Constitution has made express provision for their exemption, and in spite of the general rule. The special grounds and policy of those exemptions are well understood; and the exceptions, being accounted for, serve to confirm and emphasize the rule.

Turning, now, to the precedents, it may be conceded that the precise question here presented is one of first impression. While the interpretation of the constitutional phrase "institutions of purely public charity" has been before the various courts of the Commonwealth more than a hundred times since 1874, the legal bearing of sectarianism in this connection has never been the subject of judicial decision. The dicta, however, are numerous, and with one notable exception<sup>1</sup> favor the conclusion hereinabove announced. The most pertinent decision is the recent case of *Philadelphia v. Masonic Home*,<sup>2</sup> which will be examined at length hereinafter.

One of the earliest cases in point is *Donohugh's Appeal*,<sup>3</sup> decided in 1878, in which the Philadelphia Library was declared to be an institution of purely public charity. The opinion of the Court of Common Pleas, delivered by Mitchell, J., was unanimously adopted by the Supreme Court in a brief *Per Curiam*, and has always been referred to as the fundamental discussion of exemption under the present Constitu-

<sup>1</sup> *Per Green, J.*, in *Burd Orphan Asylum v. School District*, 90 Pa. 21, 35 (1880).

<sup>2</sup> 160 Pa. 572 (1894).

<sup>3</sup> 86 Pa. 306 (1878).

tion. In the course of his opinion, Mitchell, J., observes<sup>1</sup> that the word "purely" is used "to exclude those charities which are private, or only *quasi* public, such as many religious aid societies, and also those which, though public to some extent or for some purposes, have, like Masonic lodges and similar charities, some mixture of private with their public character." This cause was heard in the Common Pleas before Mitchell and Fell, JJ., now Justices of the Supreme Court; but the present Supreme Bench includes none of the members of that court that took part in the decision on appeal.

The case of *Burd Orphan Asylum v. School District*<sup>2</sup> was first argued in the Supreme Court in 1879.<sup>3</sup> The opinion of the court was delivered by Trunkey, J.,<sup>4</sup> holding the Burd Orphan Asylum not to be an institution of purely public charity. In 1880, after a reargument of the case,<sup>5</sup> Green, J. (who had meantime taken the place of Woodward, J.) delivered the final opinion of the court,<sup>6</sup> holding the Burd Orphan Asylum to be a purely public charity and therefore exempt from taxation. It will be noticed that Sterrett, C. J., and Green, J., are the only members of the present Supreme Court that took part in the decision of that case.

Citations from the two successive opinions of the court may profitably be compared:

Opinion by TRUNKEY, J.—"The charity is not purely public, for the reason that it is practically limited to white female orphan children who shall have been baptized in the Protestant Episcopal Church."

"If Pennsylvania Hospital closed its gates to all but Methodists or Baptists, having recent injuries, the people would not believe it a purely public charity in the intendment of their constitution. A charity for the poor of a parish or township is public, but not if confined to poor Presbyterians in the municipality." . . . "To

<sup>1</sup> At page 314.

<sup>2</sup> 90 Pa. 21 (1880).

<sup>3</sup> Before Sharswood, C. J., and Mercur, Gordon, Paxson, Woodward, Trunkey, and Sterrett, JJ.

<sup>4</sup> Sharswood, C. J., and Mercur and Paxson, JJ., dissented.

<sup>5</sup> Before Sharswood, C. J., and Mercur, Gordon, Trunkey, Sterrett, and Green, JJ.

<sup>6</sup> Gordon, Trunkey, and Sterrett, JJ., dissented.

open [the doors of a blind asylum] only to the blind of a particular religious denomination, or of a beneficial association, or of a political party, shuts them against the public. A known and recognized class, though not generally poor or diseased or decrepit, may be the subject of a public charity, as sailors; yet if the endowment were limited in its benefits to sailors who are members of a designated sect, there could hardly be two opinions of its character." . . . "Private or individual gain in a pecuniary sense is not the sole test. 'The true test is to be found in the objects of the institution.' Where these are to advance the interest of a party, of an association, of a private corporation, of a religious denomination, and the like, however beneficial to the public their growth and success may be, there is a private object to gain; the institution is not unqualifiedly public. In such cases the purpose is wholly private, or the private blends with the public."

Opinion by GREEN, J.—"But there is another and a broader ground upon which this particular charity must be sustained as purely public. It is this: The third class of persons enumerated in the will of the testatrix as the objects of her bounty are 'all other white female orphan children of legitimate birth, not less than four years of age and of not more than eight years, without respect to any other description or qualification whatever.' . . . "

. . . "Now, in legal contemplation, the persons of the third class are beneficiaries upon the same title and with the same abstract rights as those of the first and second."

. . . "But it is said that the children of the general public will be in point of fact excluded, because the preferred classes will always exhaust the physical capacity of the charity." . . . "If it were proper to dispose of the question by considering the probabilities as to the facts, we think they favor the theory that the children of the third class would have free admission to the asylum."

"Why, then, would not a charity for the support of poor Episcopilians, Catholics, Jews or Presbyterians of a state or city be purely public; or a charity for the education and maintenance of the orphan children of such persons? No private gain or profit is subserved; the objects of such a charity are certain and definite, and the persons benefited are indefinite within the specified class. The circumstance that the beneficiaries are to be of a particular religious faith is only of importance as designating the class. It indicates a certain portion of the whole community who are to be recipients of the charity. It has the same effect in this respect as the words seamen, stonemasons, blind persons, poor widows, &c., in the cases already mentioned. For the purpose of defining the class of persons who, as distinguished from all other persons in the community, are to enjoy the benefit of the donor's bounty, the legal effect is the same, whether the words used be seamen, Episcopilians, blind persons, Catholics, poor widows, Jews, stonemasons

or Presbyterians. The argument that to sustain, as purely public, a charity in favor of persons of a particular religious faith would be to maintain sectarianism, is of no weight. It is not discrimination in favor of a sect, for it is treating all sects alike. It is not even extending a preference to sectarians; it is merely recognizing them as a class of persons. We see no reason why that community which ranges persons into classes, so far as this subject is concerned, may not be a community of religious faith as well as of occupation, condition in life, sex, color, age, disability, physical or mental, or nationality."

It should be noted that the opinion by Trunkey, J., puts the decision squarely upon the ground that the benefits of the institution are confined to members of the Protestant Episcopal Church. In overruling that decision, the opinion by Green, J., sustains the claim to exemption upon "another and a broader ground," to wit: That the charity is open as well to "the orphan children of the general public," who are "in legal contemplation . . . beneficiaries upon the same title and with the same abstract rights." Touching the sectarian phase of the discussion, therefore, it is manifest that the remarks of Trunkey, J., should be accorded great weight and significance. And may not the allusion by Green, J., to "the orphan children of the *general public*" (that is, within the specified class), as distinguished from the orphan children that are members of the Protestant Episcopal Church, be accepted as a tacit recognition of the persistency of the doctrine that a gift to a sect is not a gift to the general public?

The case of *Northampton County v. Lafayette College*<sup>1</sup> was argued in the Supreme Court in 1889.<sup>2</sup> Williams, J., delivered the unanimous opinion of the Court, in the course of which he says:

"We come now to the other and broader question. Is Lafayette College entitled to ask exemption from taxation under the Constitution and the Act of 1874? That depends on whether it was founded and endowed and is maintained by public or private charity. It appears by the Act of Incorporation, § 1, Art. 8, that

<sup>1</sup> 128 Pa. 132 (1889).

<sup>2</sup> Before Sterrett, Clark, Williams, McCollum, and Mitchell, JJ.; of whom all but Clark, J., are members of the Supreme Court at the present time.

'persons of every religious denomination shall be capable of being elected trustees,' and that no person, either as principal, professor, tutor or pupil, can be refused admission into the college or denied participation in any of its privileges, immunities or advantages on account of his religious belief. In § 3 it is subjected to visitation by the state government; its books, papers and all its concerns and transactions may be investigated by the official visitors, and they are to make a detailed report to the Governor, which he in turn is required to lay before the legislature. The institution is thus seen to be not a mere sectarian or denominational school, but a secular organization under an act of the legislature, subject to the visitation and control of the state and open as to the membership of its board of trustees, as to its professorships and as to admission to its classes, to all persons. It is a public institution in the broadest sense of the word."

. . . "Upon these facts we hold that Lafayette College is a secular, not an ecclesiastical institution; that it is subject to the control of the state; that it is open to all shades of religious opinion, so that neither as trustee, teacher or scholar does eligibility depend on church membership or religious opinion. It is public in its character, in its objects, in its control—and, if a charity, is a purely public one."

In *Episcopal Academy v. Philadelphia*,<sup>1</sup> which was argued in the Supreme Court in 1892,<sup>2</sup> Williams, J., who delivered the unanimous opinion of the Court, devotes no little attention to the question of sectarianism, and finally concludes that the Episcopal Academy is not open to that objection. He says:

"The admission of pupils is not limited to children of members of the Episcopal Church either by the charter, the rules or the practice of the schools, but it is quite evident that such children are preferred." . . . "The school is not open in the same way to the general public as to persons connected with the Episcopal Church, but they are admitted as vacancies occur, and, when admitted, it is upon the same terms with all other pupils." . . . "The fact that the school is under the control of a denomination or religious sect, and that a preference is given to children of parents connected with the denomination, does not destroy its character as a public charity, since no one is excluded by reason of denominational connection or preference, but such persons are admitted as fast as vacancies occur."

<sup>1</sup> 150 Pa. 565 (1892).

<sup>2</sup> Before Paxson, C. J., and Green, Williams, McCollum, Mitchell, and Heydrick, JJ., all of whom, excepting Paxson, C. J., and Heydrick, J., are members of the present Supreme Bench.

In the case of *Sunday School Union v. Philadelphia*,<sup>1</sup> which was argued in the Supreme Court in 1894,<sup>2</sup> Williams, J., filed a dissenting opinion, in the course of which he calls attention to the fact that the charity in question (to which the other members of the Court had denied exemption) "is undenominational in its spirit, its organization and its methods."

The recent case of *Philadelphia v. Masonic Home*<sup>3</sup> is not far from being an adjudication of the question under discussion. That case was first argued in the Supreme Court in 1893; and in 1894 was reargued before the Justices that constitute the present Supreme Bench.<sup>4</sup> The opinion of the Court was delivered by Dean, J., and Williams, J., filed a dissenting opinion, in which Green, J., concurred. The Masonic Home was denied exemption because its benefits were restricted to Freemasons.

The institution was pronounced a private charity, because the right to admission was made to depend upon the fact of voluntary affiliation with the order of Freemasonry. The test is said to be :

"Is any member of humanity—that greater public of whom the Commonwealth is constructively the parent or trustee—excluded because he has not a particular relation to some society, church or other organization, which relation is dependent on his wholly voluntary act."

In view of this test, which by plain implication assigns the institution under consideration to the class of private charities, it seems worth while to consider the opinion of the Court in the case of the Masonic Home with great particularity and care.

The opinion sets out with this pertinent assertion : "There is nothing of doubt in this case except the question as to whether the appellee is an 'institution of purely public charity.'" And proceeds as follows :

<sup>1</sup> 161 Pa. 307 (1894).

<sup>2</sup> Before Sterrett, C. J., and Green, Williams, Mitchell, and Dean, JJ.

<sup>3</sup> 160 Pa. 572 (1894).

<sup>4</sup> Sterrett, C. J., and Green, Williams, McCollum, Mitchell, Dean, and Fell, JJ.

"The appellee clearly is a charity. It provides for and maintains in the Masonic Home indigent, afflicted and aged Freemasons. This, too, from voluntary contributions, without charge to the beneficiaries and with no profit either to the corporation or to its officers. Not one of the corporate officers receives a cent of compensation for administering its affairs." . . . "Of course, if this be not purely charity, nothing is." . . . "But, is it a public charity? The word 'public' relates to or affects the whole people of a nation or state." . . . "Here, while the charter and by-laws of the institution do not show that it is not 'purely public,'<sup>1</sup> the undisputed facts as to the administration of the charity show that none were admitted except Freemasons, of course excluding all other aged and indigent men, because they had not chosen to become members of a particular society. This made admission depend on an artificial badge of distinction, and not on one incident to humanity—and, therefore, it is not 'purely public.' If this be purely public, then what is not purely public?" . . . "A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public." . . . "It must be purely public—that is, there must be no admixture of any qualification for admission heterogeneous and not solely relating to the public." . . . "Nor does the argument that, to the extent it benefits Masons, it necessarily relieves the public burden, affect the question. There is no public burden for the relief of aged and indigent Masons; there is the public burden of caring for and relieving aged and indigent men, whether they be Masons or anti-Masons. But age and indigence concern the public no further than the fact of them; it makes no inquiry into the social relations of the subjects of them."

By plain analogy the institution in hand, too, must be adjudged a private charity. A necessary conclusion, foreshown in the same opinion by the following apposite dictum: "A home without charge, exclusively for Presbyterians, Episcopalians, Catholics or Methodists, would not be a public charity."

It may be suggested that, while admission to the Masonic Fraternity depends upon the joint action of the applicant and the Fraternity, admission to a sect rests upon the will of the

<sup>1</sup> The words are "a home for Freemasons, &c., and for such others as may be placed under its charge."

applicant alone; and that, therefore, the door of the sectarian charity is open to the general public. But the vice of the reasoning is twofold. On the one hand, the act of joining a church is, apart from the question of creedal conviction, still a "wholly voluntary act" within the definition of the Supreme Court; and, on the other hand, the invariable condition touching the acceptance of the sectarian tenets is quite opposed to the idea of "public," and in no right view a mere matter of form.

Clearly, in the case of the Masonic Home, the circumstance that all the beneficiaries down to the time of the litigation had been "Free and Accepted Masons" had no bearing upon the decision; the significant and controlling fact was that the required relationship of the beneficiaries to that particular organization was the result of their wholly voluntary act. In its legal aspect, the question is not whether membership in this or that particular society is within reach of all, but whether such membership is dependent upon a voluntary act. Or, in the language of the Supreme Court, is such membership a "distinction which involuntarily affects or may [so] affect any of the whole people?" Even if the doors of Freemasonry were open to all comers, the Masonic Home must remain a private charity; for participation in its bounty would still depend upon the fact (not the contingent result, for application would then be equivalent to admission) of a "wholly voluntary act."

On the other hand, is it in any proper sense true that admission to a sect is within the reach of all? To put the question is to answer it. Does a man's "conscientious persuasion or practice" count for nothing in these latter days? Can this be 'the full enjoyment of Christian liberty' secured to our people two hundred years ago? The Christian martyrs of old judged it a joy to die for their faith, and shall we of to-day be told that apostasy is no condition—no barrier? And this in the name of charity! No; the institution that demands such a price for its bounty cannot, in conscience, be adjudged a purely public charity.

And, so, whether by dint of the American-born principle of

religious liberty—at once the origin and the achievement of American civilization—or by virtue of the plain and practical rule laid down by the Supreme Court in the case of the Masonic Home, a sectarian charity, it may be affirmed, is not "purely public" under the Constitution of Pennsylvania, and, therefore, not exempt from taxation.

*William M. Meredith.*

Philadelphia, September 8, 1898.